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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,446	12/18/2002	Donald S. Hare	0175-0285P	9413
2292	7590	06/24/2005	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			SCHILLING, RICHARD L	
			ART UNIT	PAPER NUMBER
			1752	
DATE MAILED: 06/24/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/089,446

Applicant(s)

Hate et al

Examiner

RL Schilling

Group/Art Unit

1752

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 5-31-05
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-23 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-23 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Art Unit 1752

1. The finality of the last Office action is withdrawn in order to make the following rejections.

2. Claims 2-17 and 23 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. There is no antecedent basis for the term "said polyester layer" in claim 2 on line 23.

3. The non-statutory double patenting rejection, whether of the obvious-type or non-obvious-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent.

In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornam*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ 2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321 (b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78 (d).

Effective January 1, 1994, a registered attorney or agent of record may sign a Terminal Disclaimer. A Terminal Disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-77 of U.S. Patent No. 6,358,660 and claims 1-71 of U.S. Patent No. 6,410,200 in view of European Patent Publication 351,085, DeVries et al. '591 and Coleman. As

explained in paragraph 1 of the final rejection filed September 10, 2004, the European patent publication and DeVries et al. disclose processes and materials as set forth in the instant claims wherein polymer sheets are transferred into fabric receptors along with sublimable dye images with heating wherein the polymer layer is softened at the same temperature that the dyes sublime so that the dyes transfer into the polymer layers which are transferred into the fabric receptors. In view of Coleman it would be obvious to one skilled in the art to use barrier layers between the polymer layers of DeVries et al. or the European patent publication and their supports in order to prevent transfer into the supports. The particular polymer layer compositions with elastomeric emulsions, water repellents and plasticizers as set forth in the instant claims are not disclosed in the European patent publication or DeVries et al. The claimed inventions in Hagler et al., U.S. Patent No. 6,358,660, and Williams et al., U.S. Patent No. 6,410,200, are directed to the use of image receiving release layers of the same composition as the polymer layers of the instant claims for transfer into fabric supports. The water repellents are disclosed as improving wash and wear, the elastomeric emulsions are disclosed as improving mechanical stability, flexibility and stretching and the plasticizers improve static of the polymeric release layers

transferred into fabrics. The claimed inventions in Hagler et al. and Williams et al. are also directed to the use of barrier layers between the supports and polymer release layers of the same composition of the instant claims to improve the transfer of the release layers into the fabric material, particularly during hand ironing, and to prevent the heat transferable polymer layer or imaging material from adhering to the support. It would be obvious to one skilled in the art to use the barrier layers and release layer or polymer layer compositions of Hagler et al. or Williams et al. as the polymer layers of the European patent publication or DeVries et al. which transfer into fabrics for the improved wash and wear of the water repellents and the improved mechanical stability and flexibility of the elastomeric emulsions. In view of the disclosures in the European patent publication and DeVries et al. as applying sublimable dye images onto polymer release layers which melt at approximately the same temperature as the dyes sublime to transfer the polymer layers onto T-shirts or other fabrics and diffuse the sublimable dyes into the polymer layers during the transfer, it would be obvious to one skilled in the art to use the claimed elements in Williams et al. and Hagler et al. to receive sublimable dye images with sublimation temperatures approximately the same as the heat melting temperatures of the release layers of the claimed

elements in Hagler et al. and Williams et al. The elements in Hagler et al. or Williams et al. are disclosed as being imaged by various techniques such as ink jet, conventional printing inks, laser printers, electrostatic printers or thermal transfer printers such that imaging with sublimable dyes would be obvious to one skilled in the art.

3. Claims 1-23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of European Patent Publication 351,085 or DeVries et al. '591 both further in view of Coleman and Williams et al. '200. As explained in paragraph 1 of the final rejection, it would be obvious to one skilled in the art to use the barrier layers of Coleman between the supports and polymeric transfer layers of the European patent publication and DeVries which receive sublimable dye images and then transfer into fabric receptors. Williams et al. (see particularly column 2, lines 35-63; column 6, lines 16-67; column 8, line 49 - column 13, line 42) discloses transfer elements with supports, barrier layers and polymer layers that receive images and then transfer to fabric receptors by heat. The barrier layers prevent the polymer layer that transfers and images thereon from adhering to the substrate. The image receiving polymer layers that transfer in Williams et al. are disclosed as containing elastomeric emulsions, water repellents and plasticizers for better strength,

flexibility, wash and wear resistance and softening for the polymer compositions transferred to fabrics. In view of the disclosure of Williams et al., it would further be obvious to one skilled in the art to use barrier subbing layers in the transfer elements of the European patent publication and DeVries et al. in order to prevent the polymer layers or images of the European patent publication or DeVries et al. from adhering to their supports during transfer. Also, it would be obvious to one skilled in the art to use the particular polymer compositions of Williams et al. as the transferable polymer compositions in the European patent publication and DeVries et al. for the improved properties of the transferred polymers on fabrics set forth in Williams et al. The release layers with the polymers in Williams et al. have melting points or softening points useful in the processes of the European patent publication and DeVries et al. This rejection can be overcome by a statement from applicants that the instant application and Williams et al. were subject to common assignment at the time the invention was made.

4. Any inquiry concerning this communication should be directed to Mr. Schilling at telephone number (571) 272-1335.

RLSchilling:cdc

Serial No. 10/089,446

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June 22, 2005

RICHARD L. SCHILLING
PRIMARY EXAMINER

GROUP ~~100~~ 7752

A handwritten signature in black ink, appearing to be 'R. Schilling', written over the printed name and group number.